

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen Analyst: Kristina North Bill Number: SB 1169
Related Bills: See Legislative History Telephone: 845-6978 Amended Date: May 13, 1999
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Campaign Financing Reform Act Of 2000/Establish Legislative Election Fund

SUMMARY OF BILL

Under the Administration of Income and Franchise Law (AFITL), this bill would establish the Legislative Election Fund (LEF) to allow certain taxpayers to designate that a portion of their tax liability be used for public funding of political campaigns.

Under the Government Code, this bill would establish the Campaign Financing Reform Act of 2000 (the "Act") and repeal the provisions of the Political Reform Act of 1974 prohibiting public officers from expending and candidates from accepting public moneys to seek elective office. This bill would require the Franchise Tax Board (FTB) to conduct additional campaign finance audits and investigations.

This analysis addresses only those provisions that impact the FTB.

SUMMARY OF AMENDMENT

The May 13, and April 28, 1999, amendments made changes to the Government Code which would not impact the department or the collection of state income tax revenue. The department did not analyze the bill as introduced February 26, 1999.

EFFECTIVE DATE

The bill specifies that the LEF would be effective January 1, 2000, and first appear on the 1999 tax return. The other provisions of this bill would become effective March 7, 2000, if approved by the voters at the statewide direct primary election. If the other provisions are rejected by the voters, the LEF also would become inoperative. If voters approve the other provisions, the Act allowing the expenditure of public moneys for campaign elections would become operative on or after July 1, 2000, if the Controller determines that the amount of money in the LEF is \$20 million or more.

LEGISLATIVE HISTORY

SB 2106 (1998 - would have established the Legislative Election Fund - died in Committee); SB 1953 (1998 - would have established the State Candidate Election Fund - died in Committee); SB 717 (1997 - would have reenacted and extended the California Election Campaign Fund - vetoed); SB 588 (1993/1994 - would have established the Legislative Election Fund - vetoed).

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald Goldberg

6/10/1999

BACKGROUND

The California Election Campaign Fund (the first voluntary contribution fund) was enacted in 1982 and was first available for contribution on the 1982 tax return filed in 1983. Unlike this bill which is a true checkoff of tax liability, the California Election Campaign Fund was created to allow a taxpayer to designate a portion of his or her tax refund to the fund. The fund sunset and was repealed by its own terms on January 1, 1997, and last appeared on the 1996 tax return filed in 1997. This fund received approximately \$95,532 from individual contributions on 1996 tax returns.

SPECIFIC FINDINGS

Current federal law provides a true checkoff to direct \$3 (\$6 for married individuals filing jointly) of a taxpayer's tax liability to the Presidential Election Campaign Fund. Designation of the \$3 amount does not affect the amount of tax paid or reduce the refund received by the taxpayer. **Current state law** does not allow a taxpayer to designate tax liability to an election campaign fund.

Current state law allows taxpayers to make contributions of their own funds (not tax liability) on their tax returns to the 12 voluntary contribution funds listed on the state income tax return. Each fund provides for the reimbursement of the FTB's and Controller's costs to administer the fund.

Under the Political Reform Act (PRA) of 1974, **current state law** requires the FTB to audit political committees, lobbyists, lobbyist employers, and political candidates, including those campaigning for the Legislature, constitutional or local government offices. Generally, 25% of candidates whose contributions exceed established amounts are audited on a random sample basis. If contributions are less than \$15,000, a 10% random sample audit is required for Supreme Court, Courts of Appeal, and Board of Equalization candidates.

This bill would establish the Legislative Election Fund to be administered by the Controller, allowing individual taxpayers to designate an amount up to \$5 (up to \$5 each for married individuals filing jointly), in full dollar amounts, of **tax liability** to the fund. Under the Government Code, this election fund would provide funding for making payments on the basis of matchable contributions to eligible nominees, as defined, and funding of all administrative costs associated with this chapter.

Individuals with a tax liability of \$5 dollars or more, or a married couple with a liability of \$10 or more, would be allowed to designate to the LEF. Tax liability would be defined as the amount of taxes imposed, minus all credits except the Renter's Credit withholding credit, excess tax credit, and estimated taxes.

This bill would require the FTB to revise all original personal income tax forms (which include the 540, 540EZ, Telefile, 541, 540NR and scannable forms) for the 1999 tax year and thereafter to include the LEF designation. Specifically, this bill would require that, on the first page immediately preceding the filing status, language be included to allow each individual taxpayer to designate \$5 of tax liability to the LEF.

This bill also would require that tax returns specify that the designation would not increase a taxpayer's liability or reduce any refund.

This bill would require the FTB to certify to the Controller the amount which has been designated "as the tax returns are received from the taxpayers."

This bill would compensate the FTB and the Controller from the LEF for reasonable administrative expenses connected with the fund's operation.

Implementation Considerations

Section 4 of this bill specifies that language allowing designation to the LEF be placed on the 1999 tax return. Section 7 specifies that Section 4 (LEF designation on tax returns) becomes effective January 1, 2000. However, Section 7 also provides that the LEF would become inoperative if the voters do not approve the public campaign financing provisions on March 7, 2000. Tax returns with the required LEF designation would be available to taxpayers by late December 1999. In the event that voters reject the campaign election provisions, it is unclear what date the author intends the LEF become inoperative and what treatment the author intends for any LEF designations made prior to that date.

This bill specifies that every individual taxpayer with a tax liability of \$5 or more may designate, in full dollar amounts, "**up to** five dollars" to the LEF. However, this bill also would require the department to provide language on the tax return allowing each qualified individual to designate "five dollars" to the LEF. The federal Presidential Election Campaign Fund indicates a specific amount, then provides a "yes" or "no" box. Clarification of the author's intent would assist the department in determining the number of lines necessary on the tax returns to implement this bill. The federal "yes" or "no" method would facilitate processing.

This bill would require the FTB to notify the Controller of money designated to the LEF "as the income tax returns are **received** from taxpayers." It is unclear if the author intended a new continuous notification process be created to meet this requirement, which could be excessively burdensome to both the Controller and the FTB, or if the existing process by which the FTB regularly notifies the Controller of other, similar information would be sufficient.

This bill would require that the FTB and the Controller be reimbursed for all costs incurred in connection with this fund if voters approve the adoption of the Act. However, no method of reimbursement is identified. In addition, if the Act is rejected by the voters on March 7, 2000, reimbursement is not provided for FTB costs incurred for placing the LEF on the 1999 return prior to the actual vote and processing those returns with checkoffs.

This bill allows only individuals who have a tax liability of \$5 or more (\$10 for joint filers) to designate. The bill does not specify the basis to determine a taxpayer's liability for purposes of making a designation. The author's intent is unclear if a taxpayer has no tax liability at the time a designation was made or if an audit reveals a tax liability does not exist.

Currently, the tax forms suffer from serious space constraints. The forms and instructions accommodate 12 non-tax related voluntary contributions, taking up approximately one-fourth of a page on tax returns and approximately three-fourths of a page in instruction booklets. To illustrate, on the Form 540EZ and the Form 540A, the taxable income calculations, tax and credit calculations, and the amount of refund or tax owed occupy approximately one-eighth of a page, or half as much space as currently dedicated to non-tax related voluntary contribution. Additionally, in 1998, the tax returns were radically redesigned to address a privacy issue by providing Step 1a for a taxpayer to add his or her social security number (SSN). Step 1a requires more space than the previously used SSN mailing labels. This bill would exacerbate the space constraints of the personal income tax forms by adding two or more additional lines to all individual tax returns and to instructional text.

Including this designation on all original personal income tax returns would be a significant change for all taxpayers. It has been the department's experience that, when a tax law change impacts a significant number of taxpayers, taxpayer contact with the department increases, resulting in additional department resource needs. However, since a similar designation is on the federal tax return, this change may not cause a substantial problem.

In addition to the other audits authorized by the Political Reform Act of 1974, during the 1996/97 (two-year) election audit cycle, the department completed 25 Senate audits and 70 Assembly audits. Because of the campaign contribution limits proposed by this bill, the complexity and length of Senate and Assembly audits would increase. Additionally, the number of candidates for mandatory audits is expected to increase since the public funding provisions may attract additional candidates. It is projected that the Senate audits would increase by five and the Assembly audits would increase by 30 .

Technical Considerations

This bill specifies that the LEF would be Article 11 under the AFITL; however, Article 11 is currently the California Mexican American Veterans' Memorial Beautification and Enhancement Account. Additionally, the initial section number of the LEF ("18900") numerically follows the AFITL's Article 16, General Provisions. The author may wish to renumber this section to avoid confusion.

This designation is located in the AFITL (Part 10.2 of the Revenue and Taxation Code) and this bill defines "income tax liability" as the amount of taxes imposed on individuals minus certain credits under "this part." However, taxes are imposed and credits are allowed for individuals under Part 10 (Personal Income Tax Law). The two references to "this part" in this definition should be changed to reference "Part 10." See Amendments 2 and 3.

This bill would define tax liability as the amount of taxes imposed, minus all credits except the Renter's Credit, withholding credit, excess contributions tax credit, and estimated taxes. However, the renter's credit

is now a nonrefundable credit and should be subtracted like the other credits to determine tax liability. See Amendment 4.

Additionally, this bill references two code sections that should be renumbered to reflect the changes made in 1994. Specifically, on page 27, line 29, "18551.1" should read "19002," and on page 27, line 31, "18557" should read "19007." See Amendments 4 and 5.

Section "18900" does not provide subsection "(a)." See Amendment 1.

FISCAL IMPACT

Departmental Costs

Until implementation concerns are resolved, it is difficult to determine departmental costs.

Tax Revenue Estimate

Revenue losses under the Personal Income Tax Law are estimated to be as follows:

Estimated Revenue Impact of SB 1169 As Amended May 13, 1999 Effective from Tax Year 1999 (In \$Millions)			
Fiscal Years	1999/2000	2000/2001	2001/2002
Revenue Impact (Rounded)	-9	-11	-12

Any possible changes in employment, personal income, or gross state product that might result from this proposal are not taken into account.

Tax Revenue Discussion

This estimate is based on federal experience with the Presidential Election Campaign Fund where 17% of all taxable returns in 1992 (the most recent data available from the IRS) designated \$1 (or \$2 for joint filers) to that Fund. In the last several years, this percentage has declined somewhat.

It was assumed that 15% of all taxable individual state returns would designate for the LEF for tax year 1999, i.e., approximately 720,000 joint filers would designate \$10 each and around 800,000 other filers would allocate \$5 each (totals \$11.2 million). The fiscal year estimates allow for some taxpayers filing on extensions after June 30 of the respective years.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1169
As Amended May 13, 1999

AMENDMENT 1

On page 27, line 15, between "18900." and "For original personal income tax returns" insert:

(a)

AMENDMENT 2

On page 27, line 27, strike out "this part" and insert:

Part 10

AMENDMENT 3

On page 27, line 28, strike out "this part" and insert:

Part 10

AMENDMENT 4

On page 27, strikeout line 29 and on line 30, strikeout 18551.1 and insert:

Section 19002

AMENDMENT 5

On page 27, line 31, after "excess" insert:

contributions

AMENDMENT 6

On page 27, line 32, strike out "18557" and insert:

19007.